STATE OF MICHIGAN

SUPREME COURT

Appeal from the Court of Appeals

(Boonstra, P.J., Tukel, JJ and Letica, JJ)

IN RE ORTA, Minors.

MARIA ORTA,

Petitioner-Appellee,

-vs-

LISA KEENEY,

Respondent-Appellant.

Supreme Court Case Nos. _____

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Court of Appeals Case Nos. 346399
346400

Probate Court Case Nos. 15-GM-021724
15-GM-021725

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RESPONDENT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED

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JURISDICTION OF THE COURT

This Court has jurisdiction to hear this matter under MCL 600.215(3), MCL 770.3(6) and MCR 7.303(B)(1). Pursuant to MCR 7.305(B), the issues presented in this Application have significant public interest and involve two legal principals of major significance to the state's jurisprudence. Firstly, each hearing within a larger guardianship case has traditionally been treated as separate from each other hearing in the case. In other words, when a court issued an order regarding a guardianship, the order had to be appealed in normal appellate timelines. If those guidelines were missed, an appeal by right was not possible, even if the case was still ongoing. On the other hand, all hearings within a larger child protection case are treated as though they are part of a single continuous hearing. Effectively, a party may appeal an order by right at the end of the case even though the order is years old. Child protection and guardianship are distinct areas of law. In this case, however, the Court of Appeals misapplied the child protection rule to guardianship, finding that guardianships are also treated as a single continuous hearing. The decision itself provides no explanation why the child protection rule was applied. Whatever the reason, this issue will affect many Michigan families and alter the state's guardianship jurisprudence. This Court's immediate guidance is needed.

Secondly, probate courts may establish guardianships over minor children pursuant to MCL 700.5204. The Court of Appeals assigned new meaning to the reading of MCL 700.5204 that effectively causes all guardianship petitioners to prove the impossible: that a parent meant for his or her child to reside with the proposed guardian until they reach adulthood. Additionally, the Court of Appeals has rendered the statutorily constructed process for a guardianship to be terminated meaningless by allowing a parent to attack the original appointment guardianship at any time after the appointment. *In re Orta* clearly runs afoul to the nature of a full guardianship. Any case following it would turn guardianship on its head. Therefore, the Court of Appeals' decision is clearly erroneous and will cause material injustice if this decision stands.

ORDERS APPEALED

Appellant seeks leave to appeal the Michigan Court of Appeals' February 4, 2020 opinion, which erroneously blurred the lines between child protection and guardianship. A copy of that decision is attached to this Application as Exhibit A. That decision reversed the Probate Court's October 15, 2015 Orders Regarding Appointments of a Guardian of Minors. These Orders Regarding Appointments are attached as Exhibits B and C. The actual order that was appealed to the Court of Appeals was the October 25, 2018 Order denying Appellee's Petitions to Terminate the Guardianships. A copy of that Opinion and Order is attached as Exhibit D.

STATEMENT OF QUESTIONS PRESENTED

ISSUE ONE

Does *In re Ferranti's* ruling that child protection matters are single continuous proceedings apply to guardianship, thereby permitting parties to effectively collaterally attack initial guardianship appointments?

The trial court answered:	?
The Court of Appeals answered:	Yes.
Respondent-Appellant answers:	No.
Petitioner-Appellee answers:	Yes.

ISSUE TWO

Is it a requirement under MCL 700.5204(2)(b) that the parent intends for the minor child to *permanently* reside with the proposed guardian in a voluntary full guardianship?

The trial court answered:	No.
The Court of Appeals answered:	Yes.
Respondent-Appellant answers:	No.
Petitioner-Appellee answers:	Yes.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Maria Orta's two children, LAO and MPO, were born on January 20, 2011 and November 30, 2012, respectively. Ms. Orta's lifestyle – particularly her housing, employment and emotional stability – has made it difficult for her to care for the children. Ms. Orta moved 12 times between the time LAO was born and October of 2015.[1] Almost every residence was owned by a friend or relative who temporarily let her stay.[2] One dwelling was a dormitory in the Narcanon Freedom Clinic.[3] Her residence in October 2015 was a leased apartment in Albion, Michigan, where she lived for two weeks.[4] Ms. Orta was investigated by Michigan Child Protective Services for her unstable housing history and whether her home was a fit and proper place for children.[5]

In the same five-year period, Ms. Orta's employment history was sporadic. She had temporary work with the State of Michigan, a four-month stint at Speedway Gas Station and six months at the Narcanon Freedom Clinic.[6]

Ms. Orta has a history of behaving violently in front of the children and in response to minimal provocation. In December 2014, Ms. Orta and the children were staying with her mother, Lisa Keeney. Ms. Orta became angry that Ms. Keeney went to a craft show without her. In response, Ms. Orta threateningly pulled out a foot-long knife and slammed it into a table, sharp end down.[7] The children were present, close enough to see the knife and able to hear the conversation.[8]

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[1] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, pp. 6-13.
[2] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, pp. 6-13.
[3] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, pp. 5-6.
[4] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, pp. 4-5.
[5] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, pp. 16-17.
[6] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, pp. 14-15.
[7] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, pp. 23; 43-44.
[8] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, pp. 45.

In June of 2015, Ms. Orta did not have a car and her housing was in flux.[9] Neither child has a legal father to whom Ms. Orta could turn for help.[10] Ms. Orta asked Ms. Keeney if LAO and MPO could stay with her for one month.[11] Ms. Keeney agreed.[12] Ms. Orta dropped off the children at Ms. Keeney's home in Delta County, Michigan with minimal supplies, including clothes that were tattered and too small[13] and a Bridge Card with a zero balance.[14] Ms. Orta left a note that said "I, Maria Orta, am giving my permission to consent for treatment, being emergency or general care of my two children."[15] When one month passed, they agreed that the children would remain with their grandmother until Ms. Orta found a new apartment.[16]

In October of 2015, with no indication Ms. Orta planned to pick up the children, Ms. Keeney filed mirror petitions in the Delta County Probate Court to establish guardianships over LAO and MPO. The trial court found that Ms. Orta left the children in Ms. Keeney's care in June of 2015, and the children resided with Ms. Keeney at the time the Petitions for Guardianship were filed.[17] It found the note Ms. Orta left regarding the children's medical care was not proper legal authority for Ms. Keeney to provide the children with care and maintenance.[18] The trial court went on to find Ms. Orta had unstable housing, having moved twelve times in five years; extensive unemployment; difficulty providing her children with their basic necessities; and a history of domestic violence.[19]

For these reasons, the trial court held the statutory requirements to establish the guardianships were satisfied.[20] Upon finding that guardianships with Ms. Keeney would serve

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[9] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, pp. 19-20.
[10] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, pp. 11-12.
[11] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, pp. 19.
[12] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, pp. 19.
[13] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, pp. 40-41.
[14] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, pp. 22.
[15] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, Exhibit 1.
[16] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, pp. 19.
[17] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, pp. 61-62.
[18] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, pp. 61-62.
[19] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, pp. 62-65.
[20] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, pp. 62.

the children's best interests, the Court established guardianships over LAO and MPO.[21] The trial court issued its orders appointing Ms. Keeney the children's guardian on October 15, 2015. Ms. Orta never appealed these orders by right or sought leave to appeal.

Ms. Orta petitioned to terminate the guardianship twice – once in November of 2016 and again in July of 2018. The Court held evidentiary hearings for the Petitions to Terminate. Both were denied. Ms. Orta appealed the 2018 decision, arguing the trial court misapplied the requirements for creating a guardianship, and therefore improperly exercised its jurisdiction.[22]

The Court of Appeals made two holdings. First, it cited *In re Ferranti*, a child protection case, to mean all hearings within a larger guardianship case were one continuous hearing.[23] As such, the original guardianship orders were exposed to current appellate review.[24] Second, the Court found MCL 700.5204(2)(b) requires that in order to establish a full guardianship, the child's parent must intend for the child to permanently reside with that prospective guardian.[25] The Court found the guardianships over LAO and MPO should never have been established because Ms. Orta never intended for them to permanently reside with Ms. Keeney. The Court vacated the trial court's orders and, after four and a half years, the children were removed overnight from their grandmother's care. This Application for Leave to Appeal follows.

[21] Hearing on Petition to Appoint Guardian for Minor, October 15, 2015, pp. 62-65.
[22] Court of Appeals Opinion, pp. 4.
[23] *In re Ferranti*, 504 Mich 1; 934 NW2d 610 (2019); Court of Appeals Opinion, pp. 5.
[24] Court of Appeals Opinion, pp. 5.
[25] Court of Appeals Opinion, pp. 5.

ARGUMENT

I. *In re Ferranti* was designed exclusively for use in child protection cases, but was improperly applied to this guardianship case as an end-run around the collateral-bar rule.

a. Introduction

Ms. Orta argued on appeal that the trial court's initial orders establishing guardianships over LAO and MPO were improper because the statutory requirements for obtaining the guardianships were not met, so the court lacked jurisdiction. The Court of Appeals reinterpreted that argument to mean the trial court misapplied the requirements for establishing guardianships.[26] Normally, the collateral-bar rule would block this argument. However, the Court of Appeals held that *In re Ferranti* allowed all hearings within a larger guardianship case to be treated as a single continuous proceeding. The original guardianship orders could consequently be challenged at any time in the life of the guardianships, meaning the collateral-bar rule did not apply. The Court of Appeals' decision is incorrect because *Ferranti* is inapplicable to guardianship. The collateral-bar rule blocks Ms. Orta's challenge of the original guardianship orders because the appeal comes years after the orders were entered and the trial court had proper jurisdiction.

b. Standard of Review

This issue involves interpretation of case law, Court Rules and statutes, which are questions of law.[27] A claim that a lower court lacks jurisdiction" is also a question of law.[28] Questions of law are reviewed de novo.[29]

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[26] *People v. Payne*, 285 Mich App 181, 195; 774 NW2d 714 (2009) (holding that "[a]n appellant may not merely announce his position and leave it to [the] court to discover and rationalize the basis for his claims, nor may he give cursory treatment with little or no citation of supporting authority." *Also see People v. Miller*, 326 Mich App 719, 739; 929 NW2d 821 (2019) (holding that "[a]n appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue.").

[27] *Estes v. Titus*, 481 Mich 573, 578-79; 751 NW2d 493 (2008); *People v. Carey* (*In re Carey)*, 241 Mich App 222, 226; 615 NW2d 742 (2000).

[28] *Estate of Reed v. Reed*, 293 Mich App 168, 173; 810 NW2d 284 (2011); *Estes*, at 578-79.

[29] *People v. Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998); *Dep't of Human Servs. v. Mason* (*In re Mason)*, 486 Mich 142, 152; 782 NW2d 747 (2010) (holding that "the interpretation and application of statutes and court rules" is reviewed de novo); *Estes*, at 578-79.

c. *In Re Ferranti*

Ms. Orta's appeal challenges guardianship orders that were issued in October of 2015. Normally, an appeal by right in a civil matter must be taken within "21 days after entry of the judgment or order appealed from."[30] The 21-day window to appeal the orders establishing the guardianships over LAO and MPO expired over four years ago. To skirt around this time-bar, the Court of Appeals cited *In re Ferranti*. It held *Ferranti* permitted all hearings within a larger guardianship matter to be treated as a single continuous proceeding, thereby allowing the original guardianship orders to be challenged at any time during the guardianship's life.

In re Ferranti was an appeal from an order terminating parental rights.[31] In termination of parental rights matters, the case is generally treated as though it is divided into two phases: adjudication (i.e., whether the family will be subject to the Court's jurisdiction) and disposition.[32] In *Ferranti*, the parents entered a plea to adjudication.[33] Following several dispositional hearings and a three-day trial, the court found the parents had not satisfied the court-ordered treatment plan's conditions and terminated parental rights.[34] On appeal, the parents claimed there were defects in their adjudication pleas, which rendered termination improper.[35] The Michigan Supreme Court agreed that the pleas were improper.[36] More importantly, it held the pleas could be challenged in a post-termination appeal because all hearings in a child protection case are to be treated as a "singular continuous proceeding."[37]

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[30] MCR 7.204(A)(1)(a).
[31] *See generally, Ferranti.*
[32] *Id.*, at 15.
[33] *Id.*, at 9-12.
[34] *Id.*, at 10-13.
[35] *Id.*, at 13.
[36] *Id.*, at 30-31.
[37] *Id.*, at 23.

In re Ferranti was designed to apply exclusively to child protection cases. *Ferranti* begins by describing the child protection process and the rules for pleas in the adjudicative phase.[38] It cites, interprets and partially overturns *In re Hatcher*,[39] a child protection ruling that generally barred parents from raising problems in the adjudicative phase when appealing a termination order.[40] So many exceptions to the *Hatcher* rule were developed that, instead of crafting yet another exception, the *Ferranti* Court simply overturned the rule.[41] *Ferranti's* holding that all hearings within a child protection case are considered one continuous proceeding was clearly specific to child protection matters. The opinion never anticipates the rule applying beyond the child protection context.

Outside of the current matter, *Ferranti's* "singular continuous proceeding" holding has never been held to apply to anything other than child protection.[42] The Supreme Court has cited *Ferranti* in a total of five cases, all of which were child protection disputes.[43] Each citing opinion was one paragraph long and said the case had been held in abeyance until *Ferranti* could be decided.[44]

In regard to the holdings in *Ferranti*, there are good reasons that child protective proceeds are considered one continuous proceeding. In child protective proceedings, the cases may span periods of years. Child protective proceedings may begin with the goal of reunification of the child with the parent(s) but end up with a termination of parental rights.[45] Child protective proceedings

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[38] *Id.*, at 2.

[39] *In re Hatcher*, 443 Mich 426; 505 NW2d 834 (1993) (overturned by *Ferranti* on other grounds).

[40] *Ferranti*, at 7-8.

[41] *See generally*, *Ferranti* (citing *In re Hatcher*).

[42] *Ferranti* has never been citied in a subsequent published opinion.

[43] *In re McLaughlin*, 932 NW2d 639 (2019); *In re Hadd*, 931 NW2d 628 (2019); *In re Guido-Seger*, 931 NW2d 628 (2019); *In re Burkhart*, 931 NW2d 368 (2019); *In re Noffsinger*, 931 NW2d 367 (2019).

[44] *McLaughlin and Guido*-Seger involved applications for leave to appeal that were denied. The Court of Appeals decisions in *Hadd*, *Burkhart* and *Noffsinger* were vacated as a result of *Ferranti*, and each matter was remanded to the Court of Appeals for further proceedings.

[45] *In re B and J*, 279 Mich App 12, 18; 756 NW2d 234 (2008);" *Dep't of Human Servs. v Johnson (In re AP)*, 283 Mich App 574, 593; 770 NW2d 403 (2009).

have long been divided into two distinct phases: the adjudicative phase and the dispositional phase.[46]

The goal in a child protective proceeding can and does change as a case progresses. A case that starts out with a goal of reunification of the child(ren) with the parent(s) may change to a case where termination of parental rights is ultimately ordered if the parents are not making progress. Child protective cases may start out as one kind of case and end up as a totally different case with a totally different result from when the case originated. It is for this reason that they are considered a continuous case. If this were not true, every phase of the child protective case would need to be relitigated at every hearing. Principals of judicial economy apply, and the courts would be overwhelmed in child protective cases if issues needed to be relitigated as the case evolves.

The same is not true in guardianship proceedings. In guardianship proceedings, there is a decision made quickly as to the goal in the case: whether a guardianship is appropriate or not. For that reason, guardianship proceedings are different than child protective proceedings. The *Orta* court made the mistake of analyzing a guardianship proceeding in the context of a child protective proceeding and in concluding that a guardianship proceeding is a single continuous process.

d. Best Interests of the Child

Interestingly, the one issue the *Orta* court did not consider is the principal of law that is paramount in both child protective proceedings[47] and guardianship[48] proceedings, and that is the "best interests" of the child(ren). The best interests of the child are <u>always</u> paramount in these proceedings. There is no case law in this state that stands for the proposition that the best interests of the child(ren) in these types of proceedings should not be considered. In fact, the trial court undertook a complete analysis of the best interest factors when it determined whether the court

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[46] See MCR 3.972; MCR 3.973; see also, *Family Indep. Agency v. Jones (In re PAP)*, 247 Mich App 148, 153; 640 NW2d 880 (2001); *In re Nunn*, 168 Mich App 203, 206-07; 423 NW2d 619 (1988); *In re Frasier*, 147 Mich App 492, 494-95; 382 NW2d 806 (1985); *Dep't of Human Servs. v. Cox (In re AMAC)*, 269 Mich App 533, 536; 711 NW2d 426 (2006).

[47] *In re Baby X,* 97 Mich App 111, 120; 293 NW2d 736 (1980).

[48] *In Re McCarthy,* 497 Mich 1035; 864 NW2d 139 (2015).

should have terminated the guardianship based on the mother's petition. The *Orta* court never considered the best interests of the children.

e. Collateral Attack

An important legal issue implicated by treating child protection or guardianship matters as a single continuous proceeding, and which sheds light on the practical effect of applying *Ferranti* to guardianship, is the collateral-bar rule. The collateral-bar rule "generally prohibits a litigant from indirectly attacking a prior judgment in a later, *separate* action, unless the court that issued the prior judgment lacked jurisdiction over the person or subject matter in the first instance."[49] "A collateral attack 'is permissible only if the court never acquired jurisdiction over the persons or subject matter.'"[50] Want of jurisdiction is different from an error in the exercise of jurisdiction.[51] In other words, wrong decisions are not subject to collateral attack.[52] If personal and subject matter jurisdiction have been acquired, even if the trial court's decision was wrong, an aggrieved party is estopped from challenging that prior decision in a later hearing.[53]

This Court in *Ferranti* held that the parents could challenge their adjudication plea on appeal of the order terminating their parental rights.[54] This Court found that challenge was not a collateral attack[55] because child protection cases are "a single continuous proceeding.[56] Therefore, any trial court order in a child protection matter may be challenged in an appeal of a termination order, and that challenge would not be a collateral attack.[57]

The issue before this Court in the present case is whether the *Ferranti* holding that child protection matters are one continuous proceeding also applies to guardianship matters. If all

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[49] *Ferranti,* at 22-23 (citing *In re Ives*, 314 Mich 690, 696; 23 NW2d 131 (1946)).
[50] *Dir., Workers Comp. Agency v. Macdonald's Indus. Prods.*, 305 Mich App 460, 477; 853 NW2d 467 (2014) (quoting *Edwards v. Meinberg*, 334 Mich 355, 358; 54 NW2d 684 (1952)).
[51] *In re Hatcher*, at 438-39 (overruled in part on other grounds by *Ferranti*).
[52] *Macdonald's Indus. Prods.*, at 477.
[53] *Macdonald's Indus. Prods.*, at 474.
[54] *Ferranti*, at 35.
[55] *Id.*
[56] *Id.*, at 23.
[57] *Id.*, at 35.

hearings within a larger guardianship case are considered one continuous proceeding, then Ms. Orta's challenge of the trial court's original orders establishing guardianships over LAO and MPO may be raised at any time. If the guardianship matters are not considered one continuous proceeding, then Ms. Orta's challenge of the original orders would be a collateral attack.

If Ms. Orta's challenge of the original guardianship orders is considered a collateral attack (i.e., guardianships are not one continuous proceeding), then this Court must decide whether the trial court held jurisdiction over the matter. The trial court in this case was the Delta County Probate Court. Michigan Probate Courts have exclusive subject matter jurisdiction over guardianships.[58] This case involves guardianships of two minors. Probate Courts have personal jurisdiction if the individual for whom a guardianship is sought resides in the state[59] and the guardian submits to the court's jurisdiction in a proceeding related to the guardianship.[60] LAO and MPO lived in Michigan and the guardian submitted herself to the trial court's jurisdiction by initiating the matter in that court. Clearly, the trial court had proper jurisdiction. Ms. Orta's argument is blocked by the collateral-bar rule.

If Ms. Orta's challenge is viewed as an argument that the Court did not properly exercise its jurisdiction (its original formulation in her appeal), then it fails because it would not be proper appeal.[61] If Ms. Orta's challenge is a collateral attack regarding the trial court's jurisdiction, then it fails. However, by reformulating Ms. Orta's argument and misapplying *Ferranti's* inapplicable single continuous hearing rule to guardianships, the Court of Appeals side-stepped appellate rules (both filing timelines and Ms. Orta's failure to actually appeal the original guardianship orders) and the collateral-bar rule, which allowed Ms. Orta to challenge the original guardianship orders.

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[58] MCL 700.1302(c).
[59] MCL 700.5301b.
[60] MCL 700.5307.
[61] *In re Hatcher*, at 438-39 (overruled in part on other grounds by *Ferranti*).

f. Implications for Guardianship Jurisprudence

Whatever the Court of Appeals' reasoning for expanding *Ferranti's* single continuous proceeding holding into guardianships (their opinion provides none), this case leaves Michigan guardianship law in a state of abject confusion. Courts, practitioners and parties are left unclear as to how orders establishing guardianships will be treated. Trial courts will be unsure if guardianship procedure has been blended with child protection procedure, and if so, to what extent. By extension, they will not know if their orders establishing guardianships are safe from appeal even years after their entry or are essentially always appealable for as long as the guardianship exists. Appellate courts need guidance as to whether to treat guardianships as a single continuous proceeding or a series of distinct hearings and orders. Different courts and appellate panels may give similar cases and similarly situated parties dissimilar treatment. Practitioners are left to explain to parties that no one knows whether an order establishing a guardianship is still appealable after the normal appellate deadlines have run. This Court's guidance is needed.

g. Conclusion

Ferranti's single continuous proceeding rule is exclusively meant to be used in child protection. It is inapplicable to guardianship. Its misapplication here allowed Ms. Orta's improper challenge to be considered when it should never have been reached. This Court should hold that a) *Ferranti's* single continuous proceeding rule is applicable only in child protection, and b) guardianships are not single continuous proceedings.

II. Is it a requirement under MCL 700.5204(2)(b) that the parent intends for the minor child to *permanently* reside with the proposed guardian in a voluntary full guardianship?

a. Introduction

Guardianships are an essential tool in Michigan courts. They are used in both child protection cases under the Juvenile Code or upon petition of a private citizen interested in a child's welfare under the Estates and Protected Individuals Code, such as in the current case before this Court. They are not adoptions, or even custody arrangements and are not meant to be a permanent

arrangement for a child. There are mechanisms in the law that allow for the temporary nature of guardianships coupled with the needed flexibility of extending a guardianship over a much longer time span than may have been originally anticipated. It is through this lens that the analysis of MCL 700.5204(2)(b) must be made. The Court of Appeals made grave error in holding that the residency requirement of a guardianship can only be met when the parent intends for the child to reside permanently with another person because a guardianship is inherently temporary in nature. This error, if left to stand, will change the face of Michigan guardianships forever. The following arguments pinpoint why it is crucial that this issue be reviewed and corrected before irreparable damage is done upon guardianships in the Michigan courts.

b. Standard of Review

Issues of statutory construction are questions of law that are reviewed de novo.[62]

c. Argument

The Court of Appeals erred in holding that MCL 700.5204(2)(b) requires that the parent or parents permit the minor to *permanently* reside with another person. This holding creates a requirement in the statute that previously did not exist, and effectively and erroneously renders guardianship unavailable in a temporary arrangement. This interpretation goes against the plain language of the statute and destroys the meaning of a full guardianship.

i. The Panel adopted a meaning for the term "resides" that goes against the plain meaning of MCL 700.5204(2)(b) and assigned it the technical, legal meaning that is contrary to legislative intent.

The "fundamental obligation when interpreting a statute is to discern legislative intent that may reasonably be inferred from the words expressed in the statute".[63] MCL 700.5204(2)(b) states that a trial court "may appoint a guardian if the parent or parents permit the minor to *reside* with another person and do not provide the other person with legal authority for the minor's care and

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[62] *Atchison v. Atchison*, 256 Mich App 531, 534-35; 664, NW2d 249 (2003).
[63] *Brackett v. Focus Hope, Inc.*, 482 Mich 269, 275; 753 NW2d 207 (2008).

maintenance, and the minor is not *residing* with his or her parent of parents when the petition is filed."[64] The statute uses the word "reside" when describing the permission from the parent to reside with another person. It also uses the word "residing" when stating that the minor child is not residing with his parent at the time the petition is filed. The statute does not define the term "reside" or "residing" as used in either part of the statute.

The Court construes statutes in order to give effect to the Legislature's intent.[65] This court gives "the words of a statute their plain, ordinary meaning."[66] This Court has held that when a term is undefined by a statute, it may look to dictionary definitions to aid in its interpretation.[67]

In *Kubiak v. Steen*, the Court analyzed the statute defining venue in a child custody dispute.[68] In that case, like the current case, the legislature did not use the word "residence" or "domicile" but "resides." The court, citing the *Corpus Juris Secundum*, notes that "the word 'reside' means the personal, actual, or physical habitation of a person; actual residence or place of abode; and it signifies being physically present in a place and actually staying there. In this sense it means merely a residence."[69] The *Kubiak* court held that the Legislature intended for the word "reside" to be used in the popular sense of where the child actually lives because it is the logical application when considering the best interests of the child in the context of child custody.[70]

Even applying a narrower, more technical version of the term "resides" does not necessarily require the intent that the child permanently reside. The Court of Appeals in *Kar v. Nanda*[71] relied on a dictionary definition when another statute did not define "resides". *Kar* analyzed the meaning of "resided" in the context of establishing jurisdiction for divorce. The Court

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[64] MCL 700.5204(2)(b).
[65] *Briggs Tax Serv., LLC v. Detroit Pub. Sch.*, 485 Mich 69, 76; 780 NW2d 753 (2010).
[66] *Bulkowski v. Detroit*, 478 Mich 268, 274; 732 NW2d 75 (2007); *Brackett*, at 276.
[67] *Oakland Co. Rd Comm'rs v. Mich. Prop. & Cas. Guaranty Ass'n*, 456 Mich 590, 604; 575 NW2d 751 (1998); *Brackett*, at 276.
[68] *Kubiak v. Steen*, 51 Mich App 408, 413; 215 NW2d 195 (1974).
[69] *Id.*, at 414 (citing 77 C.J.S. Reside, pp. 285-286).
[70] *Kubiak*, at 414.
[71] *Kar v. Nanda*, 291 Mich App 284, 288; 805 NW2d 609 (2011).

used the Random House Webster's College Dictionary (1997) to find a definition of resides and found that the term "reside" meant "to dwell permanently or for some time; live."[72] The court reasoned that other cases equated "resided" with residence and domicile and intent to remain, and it must consider the meaning of "intent to remain."[73] The court held that even though the statute's "resided" requirement constituted an abode with an intention to remain, it did not require the intent to permanently or indefinitely remain.[74]

In the present case, the Court of Appeals did not follow the directive of this Court in *Briggs, supra,* that it must consider the intent of the legislature. In this case, the Court of Appeals is noticeably silent regarding legislative intent. In MCL 700.5204(2)(b), the legislature does not distinguish between the first time and second time the term "resides" or "residing" is used in the statute. The only way the statute can make sense is to assign the plain meaning to the term "reside," as the court did in *Kubiak, supra*. "Not currently residing with the parent" clearly means not being physically present at that time in the parent's home because of the word "currently" in front of it. To assign the meaning the panel affixed to the term reside would be mean that the child is "currently not permanently residing with the parent." That doesn't make any sense. It follows that since the legislature did not make a distinction between the two uses of the words reside or residing, both terms of reside should be given the same meaning. The court may not read into the statute what is not within the Legislature's intent as derived from the statute.[75]

Assigning the popular definition to the word "reside" not only makes sense based on a logical reading of the statute, but it also supports how guardianship is viewed under Michigan law. The Court of Appeals' choice to apply the permanency element to the word "reside" renders the use of guardianships nearly obsolete. Guardianships are by design a temporary endeavor. The purpose is to give those guardians who have temporary care of a child the legal rights and tools to

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[72] *Id.*
[73] *Id.*, at 290.
[74] *Id.*, at 294.
[75] *Robinson v. City of Lansing*, 486 Mich.1, 15; 782 NW2d 171 (2010) (superseded by statute on other grounds).

properly tend to the child's needs. If possible, the ultimate goal is to eventually reunite the child with the biological parent.

If the permanency element that the Court of Appeals used in *Orta* stands, then nearly all future guardianships will be rendered void, as there is rarely an intent that guardianship is a permanent solution. The fact that the courts conduct annual reviews on guardianship matters further signifies our legal system's intent that they be temporary in nature.[76] All of these Court Rules and statutes have a review or termination component, which shows guardianships are not meant to be permanent. The Legislature would not have included a review requirement if guardianships were meant to be permanent.

ii. The Court of Appeals erroneously held that a guardianship is not appropriate when the arrangement was only temporary because MCL 700.5204(2)(b) clearly applies to parents temporarily allowing their children to live with another person because that is exactly why full guardianships exist.

The *Orta* opinion neglected to mention two simple but key uncontested facts. First, on September 11, 2015 when Ms. Keeney filed the guardianship petitions, Ms. Orta consented to her children living with their grandmother. Second, the children were not living with their mother. Those requirements of MCL 700.5204(2)(b) were met.

Instead, the Court of Appeals assigned significant weight to the mother's testimony that she intended the children to be with their grandmother for a month, and it turned out longer. That court held that because the living arrangement was temporary and not permanent, the requirements to establish the guardianship were not met. The transcript from the original guardianship hearing makes clear that the mother was unhappy about the guardianship. She also testified that she meant the arrangement to be in a timeline that worked for her. However, this guardianship was a full guardianship and not a limited guardianship, so the mother's consent to the guardianship was not relevant.[77] The Court of Appeals appeared to give no weight to the grandmother's testimony from

[76] MCR 3.975; MCR 3.979; MCL 700.5201 *et seq.*; MCL 712A.1 *et seq.*; MCL 722.875.
[77] MCL 700.5205(1).

the 2018 termination petition hearing that the original agreement was for the children to stay for one month, but the time was extended when the grandmother did not hear from the mother after that agreement was made.[78]

The *Orta* court was correct that the parties initially agreed the arrangement was to be temporary. However, the relevance and weight of that finding is misplaced. It is not certain whether the *Orta* court's emphasis on the temporary nature of the initial agreement meant it felt there only should have been a temporary guardianship. However, a temporary guardianship would only be available pending a full guardianship hearing.[79] The *Orta* Court did not find that Petitioner-Appellee failed to transfer legal authority. Regardless, even in a *temporary* transfer of legal authority, a guardianship is deemed appropriate.

In *Trudeau v. Martin*,[80] the probate court held that the power of attorney the parent executed delegating parental authority to his sister divested the court of its jurisdiction to consider the guardianship petitions. The Court of Appeals overturned this decision, holding a power of attorney is the temporary transfer of legal authority without any apparent regard to the long-term needs of the children and that a guardianship was appropriate to attend to the children's well-being.[81] The *Trudeau* court noted that the parent attempted to temporarily transfer his parental authority, but that was insufficient to address the children's long-term needs.[82] Full guardianships are meant to bridge the gap between the parents' temporary needs to transfer authority to another person and the long-term needs of children who need care.

In this case, the mother drafted a document that failed to conform with the requirements of a power of attorney. However, even if she had executed a properly drafted power of attorney, it would have been insufficient authority to prevent a guardianship. By their nature, guardianships –

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[78] Hearing on Petition to Terminate Guardianship Vol. 2, September 26, 2018, pp. 4-5.
[79] MCR 5.403(A).
[80] *Trudeau v. Martin* (*In re Martin*), 237 Mich App 253, 254; 602 NW2d 630 (1999).
[81] *Id.*, at 258.
[82] *Id.*

including full guardianships – are temporary and last until the parent successfully petitions to terminate it.

There is a statutory scheme for parents to terminate guardianships through MCL 700. 5209(c). MCL 700.5201 states that a guardianship "continues until terminated," which is evidence that the Legislature intended for guardianships to be temporary. As guardianships may be terminated, they are not meant to be permanent. The Court of Appeals neglected to mention why the mother's previous petition to terminate the guardianships was unsuccessful.

iii. The Court of Appeals erroneously relies on two cases to create new law that guardianship of a minor requires a parent or parents to permit his or her child to permanently reside with another person.

The Court of Appeals in this case decided full guardianships are invalid if the parent intended for a child to only temporarily reside with another person. It attempts to cite *Deschaine v. St. Germain* as authority for assigning this permanency requirement to MCL 700.5204(2)(b).[83] However, *Deschaine* did not define or even address the meaning of "reside".

The issue in *Deschaine* was whether the mother of the child permitted the child to reside with the grandfather when the petition was filed. Although it did use the phrase "permanently resides" once within its discussion of parental consent or permission, the court offered no analysis whether "resides" was defined with the legal/technical or plain meaning of the term.[84] The *Deschaine* case turned on the meaning of "permit". The child was living with the mother when the mother died. Thereafter, the grandfather filed the petition for guardianship. The mother had given previous permission for the child to live with the grandfather, but the child was not living with the grandfather when the mother died. The *Deschaine* court found there was no permission from the mother for the guardianship at the time the guardianship issue arose.[85] The court held that past

[83] *Deschaine v. St. Germain*, 256 Mich App 665; 671 NW2d 79 (2003).
[84] *Id.*, at 669.
[85] *Id.*, at 670.

permission is not adequate under the statute to establish a guardianship.[86] The *Deschaine* court did not hold that there is a permanency requirement to establish a full guardianship. Therefore, the Court of Appeals in the current case misapplied *Deschaine* to creating a new permanency requirement under guardianship statute.

The Court of Appeals also erroneously relied on *Weaver v. Giffels*[87] to support their holding that the court "reads 'resides' as containing not only a physical presence but an accompanying intent element of choosing that place as a permanent residence."[88] *Weaver* does not hold that the definition of resides *always* has a physical component and an intent component to it. It did not overturn *Kubiak* or other cases that apply the simple, plain meaning of the word resides and in fact, cites *Kubiak* in its opinion. The *Weaver* court used language from the child support statute that pertains to extending a child support obligation. Specifically, the statute imposes a continuing obligation to pay child support when a child turns 18 but is still attending high school and "residing" on a "full time basis" with the child support recipient. MCL 552.605b(2). The court held that aside from the meaning of "full time" basis, the equally if not more important issue is the meaning the statute gave to "reside".[89] The court adopted the legal definition of the term reside, which contains both the physical presence and intent of the child to make her mother's home the permanent residence.[90]. By adopting the technical legal definition of "reside," the court allowed the possibility that the extension in the child support obligation could apply even when the daughter also spent overnights with her father.[91] Unlike the *Weaver* court, the panel in *Orta* does not attempt to analyze why it assigns a technical legal term to reside the way the court in *Weaver*

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[86] *Id.*, at 673.
[87] *Weaver v. Giffels*, 371 Mich App 671; 895 NW2d 555 (2016).
[88] *In Re Orta*, unpublished opinion of the Michigan Court of Appeals, February 4, 2020, Docket #346399 and 346400.
[89] *Weaver*, at 684.
[90] *Id.*, at 685.
[91] *Id.*, at 685-86.

did. The *Orta* court merely states it is going to assign an "intent to permanently reside" requirement to the statute because the court did so in another case.

In this case, the Court of Appeals never explained why it created the requirement that a parent intend to permit the child to permanently reside with another person. Its lack of analysis is especially egregious when it is assigning meaning to a term in a statute, particularly when the meaning the court chose destroys the meaning of guardianships in Michigan; i.e., to create *temporary* solutions for children with long-term needs.

PRAYER FOR RELIEF

WHEREFORE, Respondent-Appellant prays that this Honorable Court render the following relief, along with any other relief deemed just, equitable and appropriate:

1) Grant this Application for Leave to Appeal;

2) Reverse the Court of Appeals' decision;

3) Reinstate the trial court's guardianship orders; and

4) Remand these matters to the trial court for further proceedings consistent with this requested relief.

Respectfully submitted,

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/s/ Katherine J. Clark

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Dated: March 16, 2020

EXHIBIT A

STATE OF MICHIGAN

COURT OF APPEALS

In re ORTA, Minors.

MARIA ORTA,

Petitioner-Appellant,

v

LISA KEENEY, Guardian,

Respondent-Appellee.

UNPUBLISHED
February 4, 2020

Nos. 346399; 346400
Delta Probate Court
LC No. 15-021724-GM;
15-021725-GM

Before: BOONSTRA, P.J., and TUKEL and LETICA, JJ.

PER CURIAM.

In these consolidated appeals,[1] petitioner appeals as of right an order denying her motion to terminate the guardianship of her two minor children, LAO and MPO. Respondent, petitioner's mother and the children's grandmother, was first appointed the children's guardian in October 2015. These appeals arise from petitioner's second petition to terminate the guardianship. Because the trial court improperly exercised its jurisdiction, we vacate its orders and remand for further proceedings consistent with this opinion, namely, returning the children to petitioner.

I. BACKGROUND

We summarize only facts and procedural history from the initial guardianship hearing, as it is the only proceeding pertinent to the relevant legal issue.

[1] *In re Guardianship of LAO*, unpublished order of the Court of Appeals, entered December 7, 2018 (Docket Nos. 346399 and 346400).

In June 2015, 25-year-old petitioner took 4-year-old LAO[2] and 2½ -year-old MPO[3] to respondent's home near Escanaba in Delta County in the Upper Peninsula. Petitioner, who lived about eight hours away, left respondent with clothing[4] and supplies for her children, a signed statement consenting to emergency or general treatment for her children, her children's health insurance cards, and her telephone number. At that point, it was anticipated that petitioner's children would remain in respondent's care for a month.

According to petitioner, after the month passed, she and respondent had a telephone conversation, wherein respondent relayed that she would keep petitioner's children until petitioner was able to get into her apartment. And, although petitioner did not provide respondent with monetary support for her children, petitioner testified that she had offered to provide support, but respondent agreed that petitioner did not have to provide any.

Over Labor Day weekend 2015, petitioner borrowed a friend's car to see her children. Petitioner could not afford her own car and her first concern was securing housing for her family. Although petitioner had moved repeatedly during the five preceding years,[5] she had leased a two-bedroom apartment as of October 1st and had full-time employment. Petitioner's employer routinely drug-tested her confirming that she was drug-free. Moreover, petitioner had no criminal record.

Within days of petitioner's visit, respondent filed a guardianship petition, alleging that a temporary guardian was necessary because petitioner had seen her children once in three months and "provides no care or support." The petition reflected that petitioner was homeless and possibly living in Eaton County.

That very day, the trial court appointed respondent as her grandchildren's temporary guardian based on respondent's allegation that "the parent[] permit[s] the minor[s] to reside with another person and d[id] not provide the other person with the legal authority for the care and maintenance of the minor[s] who w[ere] not residing with a parent when the petition was filed." The court further ordered that any parenting time would be in respondent's discretion. The temporary guardianship was to expire on October 9, 2015. This was later extended to October 15th.

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[2] According to petitioner's testimony, LAO's father is deceased; according to respondent, there were three or four men, and maybe even five, who were potentially LAO's biological father.

[3] MPO has no legal father; again, respondent suggested there were multiple potential biological fathers.

[4] Respondent would later testify that while petitioner was well-dressed and manicured, LAO had outgrown her panties and she was wearing socks provided by respondent. As to MPO, he had a blister because his shoes were too tight.

[5] Petitioner estimated she had moved on 11 or 12 occasions; respondent estimated 20 occasions with 3 of them being with respondent.

Respondent's attorney's office served petitioner with notice of the temporary guardianship, her ability to object, and notice of the hearing regarding respondent's petition for full guardianship in care of an address in Eaton County. The Department of Human Services (DHHS) was appointed to investigate and report to the court.

Thereafter, respondent brought her grandchildren downstate for a funeral. Afterward, petitioner took LAO and walked down the road; petitioner could not take MPO because he was inside respondent's car. Petitioner called the police, reporting that her parents were trying to take her children. After respondent produced the guardianship paperwork, the police advised petitioner that she needed to go through the court. Thereafter, respondent re-served petitioner with the legal papers at an address in Calhoun County.

During the hearing on the petition, respondent testified that "I want [petitioner] to be their mom, but I want her to get her life together." Respondent's attorney assured the court that respondent would "be responsible and enable the children to have healthy and substantial contact with their mother. She's not going to build a brick wall around them, . . . and [petitioner] is going to have to re-earn the trust of her mother to make sure that these visits go well[.]" Respondent's attorney predicted future DHHS intervention for petitioner, noting her history of transience, internet-based relationships, and poor judgment in providing for her children's material needs.

Petitioner, who represented herself, assured the court that she was unaware of the temporary guardianship when she had called the police. Petitioner maintained that she had yet to receive the guardianship paperwork. Petitioner further suggested that her children were being harmed by her inability to visit them given that she lived seven hours away.

Following the October 2015 hearing, the court concluded that the statutory grounds for implementing a guardianship were met. The court then appointed respondent as the children's full guardian. The court's order left parenting time in the guardian's discretion and directed DHHS to assist petitioner with reasonable visits and phone calls.[6] The court further ordered petitioner to pay $20.00 per child in temporary support, consistent with what petitioner claimed she could afford, until the Friend of the Court (FOC) made its support recommendation. Because petitioner was in town, later that same day, per the parties' stipulation, the court entered an order setting support at $350 per month for both children to begin November 1.

The trial court stated that the guardianship would be terminated if petitioner obtained a stable job and housing and continued a relationship with the children. The court indicated that it "want[ed] to see a longer pattern of stability in" petitioner's employment[7] and "living arrangement."

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[6] There is no record evidence that DHHS did anything to assist petitioner with visitation or contact.

[7] It appears that the court mistakenly believed that petitioner was employed for a couple of weeks. In fact, petitioner had been employed for six months, but had received a promotion two weeks earlier.

Petitioner thereafter filed two petitions to terminate the guardianship in November 2016 and, with counsel, in July 2018. Throughout the relevant period, the trial court also ordered DHHS to provide statutorily mandated annual review and twice continued the guardianship without a hearing.[8]

This appeal follows the trial court's denial of the July 2018 petition to terminate.

III. DISCUSSION

A. STANDARDS OF REVIEW

We review jurisdictional questions de novo. *Bank v Mich Ed Ass'n—NEA*, 315 Mich App 496, 499; 892 NW2d 1 (2016). We also review questions of statutory interpretation de novo. *Weaver v Giffels*, 317 Mich App 671, 678; 895 NW2d 555 (2016).

"This Court . . . reviews for an abuse of discretion a probate court's dispositional rulings and reviews for clear error the factual findings underlying a probate court's decision." *In re Bibi Guardianship*, 315 Mich App 323, 328; 890 NW2d 387 (2016). "An abuse of discretion occurs when the court's decision falls outside the range of reasonable and principled outcomes." *In re Bittner Conservatorship*, 312 Mich App 227, 235; 879 NW2d 269 (2015). Moreover, "[a] trial court necessarily abuses its discretion when it makes an error of law." *Pirgu v United Servs Auto Ass'n*, 499 Mich 269, 274; 884 NW2d 257 (2016).

"A finding is clearly erroneous when a reviewing court is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding." *In re Bennett Estate*, 255 Mich App 545, 549; 662 NW2d 772 (2003). We defer to the trial court "on matters of credibility, and will give broad deference to findings made by the probate court because of its unique vantage point regarding witnesses, their testimony, and other influencing factors not readily available to the reviewing court." *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993).

B. JURISDICTION

Petitioner argues that the trial court lacked jurisdiction to appoint respondent the children's guardian in the first place because the statutory requirements for obtaining the guardianship were not satisfied.

Initially, we believe that petitioner's jurisdictional challenge is better understood as an argument that the trial court misapplied the requirements for establishing a guardianship. And, because we agree that the initial guardianship appointment was merely the first phase in a continuous guardianship proceeding, we conclude that petitioner's challenge to the trial court's

[8] The court is required to review a guardship annually if the minor involved is under six years of age.

exercise of its jurisdiction is permissible. See *e.g.*, *In re Ferranti*, 504 Mich 1; 934 NW2d 610 (2019).

A trial court may appoint a guardian if: "[(1)] The parent or parents permit the minor to reside with another person and [(2)] do not provide the other person with legal authority for the minor's care and maintenance, and [(3)] the minor is not residing with his or her parent or parents when the petition is filed." MCL 700.5204(2)(b). This Court has previously explained that, if a parent permits her "child to *permanently* reside with someone else when the guardianship issue arises, the court may appoint a guardian for the child." *Deschaine v St Germain*, 256 Mich App 665, 669-670; 671 NW2d 79 (2003) (emphasis added). In other words, this Court reads "resides" as containing not only a physical presence, but also an accompanying intent element of choosing that place as a permanent residence. *Weaver v Giffels*, 317 Mich App 671, 685; 895 NW2d 555 (2016).

In this case, there is no dispute that the original agreement between petitioner and respondent involved a *temporary* living arrangement for petitioner's children. Initially, petitioner asked respondent to care for petitioner's children for about one month. There is no dispute that respondent agreed to this temporary arrangement. And, at the initial hearing on the guardianship, petitioner testified that she and respondent spoke after the month had passed and agreed that respondent would continue to care for petitioner's children until petitioner moved into her apartment. Again, this was a *temporary* arrangement and petitioner leased her apartment effective October 1, 2015. Because a necessary statutory requirement was lacking, the trial court erred in appointing respondent the children's guardian.[9] Accordingly, we vacate the trial court's orders and remand for further proceedings consistent with this opinion, namely, to return petitioner's children to her. We do not retain jurisdiction.

This opinion has immediate effect. MCR 7.215(F)(2).

/s/ Mark T. Boonstra
/s/ Jonathan Tukel
/s/ Anica Letica

[9] In light of our resolution, we need not further address petitioner's remaining claims.

EXHIBIT B

STATE OF MICHIGAN PROBATE COURT COUNTY OF DELTA	ORDER REGARDING APPOINTMENT OF ☑ GUARDIAN ☐ LIMITED GUARDIAN OF A MINOR	FILE NO. 15 GM - 21724 15 GM - 21725

In the matter of LEILANI ALICE ORTA, a minor

USE NOTE: Use form PC 653-I if the minor is an Indian child.

1. Date of hearing: 09/11/2015 Judge: ROBERT E. GOEBEL, JR. (P23020) Bar no.

THE COURT FINDS:

2. Notice of hearing was given to or waived by all interested persons, venue is proper, and a qualified person seeks appointment.
☐ 3. The minor named above is not in need of a guardian.
☑ 4. The minor named above is unmarried and is in need of a guardian because
☐ a. parental rights of both parents or of the surviving parent have been
☐ terminated ☐ suspended by
☐ prior court order. ☐ judgment of divorce or separate maintenance.
☐ death. ☐ judicial determination of mental incompetency.
☐ disappearance. ☐ confinement in a place of detention.
or ☑ b. the parent(s) permit the minor to reside with another person and do not provide the other person with the legal authority for the care and maintenance of the minor who was not residing with a parent when the petition was filed.
or ☐ c. the biological parents of the minor were never married to each other, the custodial parent has ☐ died, ☐ disappeared, and the other parent has not been granted legal custody by court order. The proposed guardian is related to the minor within the fifth degree by marriage, blood, or adoption.
☐ 5. The minor named above is unmarried, and the custodial parent(s) consented to the appointment of a limited guardian and voluntarily consented to suspension of parental rights. A limited guardianship placement plan has been filed and approved.
☑ 6. The welfare of the minor will be served by the appointment,
☑ and by ☑ payment of reasonable support. ☐ reasonable parenting time and contact by the parent(s).
☐ 7. There is no qualified, suitable individual willing to act as guardian, and the appointment of a nonprofit corporation as guardian is in the best interest of the minor. A personal bond must be filed.

IT IS ORDERED:

☑ 8. The petition is ☑ granted. ☐ denied on the merits. ☐ dismissed/withdrawn.
☐ 9. LISA A. KEENEY (Name (type or print)), whose address and telephone number are

16650 STATE HIGHWAY M35	ROCK	MI	49880	(906) 360-7567
Address	City	State	Zip	Telephone no.

is appointed ☑ full ☐ limited ☐ temporary guardian of the minor named above, and an acceptance of appointment shall be filed. ☐ Personal bond at $ _____ must be filed.
The guardian is not permitted to act until letters of guardianship are issued. After qualification, the guardian shall comply with all relevant requirements under the law.
☑ 10. This appointment is ☑ regular. ☐ temporary, expiring on _____ (Date)
☑ 11. Parenting time shall be ☐ as stated in the placement plan.
☒ AT THE DISCRETION OF THE GUARDIAN - D.H.H.S. TO ASSIST REASONABLE VISIT AND PHONE CALL
☐ 12. Child support shall be paid as follows: ☐ as stated in the placement plan.
☐ father: N/A NO LEGAL FATHER ☒ mother: CHILD SUPPORT @ 20.00
☐ 13. Other:
UNTIL F.O.C. RECOMMENDATION OR 3RD PARTY SUPPORT

10-15-15
Date

Judge

JOHN B. ECONOMOPOULOS (P58074)
Attorney name (type or print) Bar no.

1200 LUDINGTON STREET	ESCANABA	MI	49829	(906) 786-1310
Address	City	State	Zip	Telephone no.

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FILED IN DELTA COUNTY
OCT 15 2015
REGISTER OF PROBATE

MCL 700.5106, MCL 700.5204, MCL 700.5205, MCL 700.5212, MCL 700.5213, MCR 5.402(E)

EXHIBIT C

Approved, SCAO

JIS CODE: PCS - OAM
TCS - OAGM

STATE OF MICHIGAN PROBATE COURT COUNTY OF DELTA	ORDER REGARDING APPOINTMENT OF ☑ GUARDIAN ☐ LIMITED GUARDIAN OF A MINOR	FILE NO. 15-GM-21724 15-GM-21725

In the matter of MARQUES PAUL ORTA, a minor

USE NOTE: Use form PC 653-I if the minor is an Indian child.

1. Date of hearing: 09/11/2015 Judge: ROBERT E. GOEBEL, JR. (P23020) Bar no.

THE COURT FINDS:

2. Notice of hearing was given to or waived by all interested persons, venue is proper, and a qualified person seeks appointment.
☐ 3. The minor named above is not in need of a guardian.
☑ 4. The minor named above is unmarried and is in need of a guardian because
☐ a. parental rights of both parents or of the surviving parent have been
☐ terminated ☐ suspended by
☐ prior court order. ☐ judgment of divorce or separate maintenance.
☐ death. ☐ judicial determination of mental incompetency.
☐ disappearance. ☐ confinement in a place of detention.
or ☑ b. the parent(s) permit the minor to reside with another person and do not provide the other person with the legal authority for the care and maintenance of the minor who was not residing with a parent when the petition was filed.
or ☐ c. the biological parents of the minor were never married to each other, the custodial parent has ☐ died, ☐ disappeared, and the other parent has not been granted legal custody by court order. The proposed guardian is related to the minor within the fifth degree by marriage, blood, or adoption.
☐ 5. The minor named above is unmarried, and the custodial parent(s) consented to the appointment of a limited guardian and voluntarily consented to suspension of parental rights. A limited guardianship placement plan has been filed and approved.
☑ 6. The welfare of the minor will be served by the appointment,
☑ and by ☑ payment of reasonable support. ☐ reasonable parenting time and contact by the parent(s).
☐ 7. There is no qualified, suitable individual willing to act as guardian, and the appointment of a nonprofit corporation as guardian is in the best interest of the minor. A personal bond must be filed.

IT IS ORDERED:

☑ 8. The petition is ☑ granted. ☐ denied on the merits. ☐ dismissed/withdrawn.
☐ 9. LISA A. KEENEY (Name (type or print)), whose address and telephone number are

16650 STATE HIGHWAY M35	ROCK	MI	49880	(906) 360-7567
Address	City	State	Zip	Telephone no.

is appointed ☑ full ☐ limited ☐ temporary guardian of the minor named above, and an acceptance of appointment shall be filed. ☐ Personal bond at $ ____ must be filed.
The guardian is not permitted to act until letters of guardianship are issued. After qualification, the guardian shall comply with all relevant requirements under the law.
☑ 10. This appointment is ☑ regular. ☐ temporary, expiring on ____ (Date).
☒ 11. Parenting time shall be ☐ as stated in the placement plan.
☒ at the discretion of guardian. DHHS to assist reasonable visitation and phone calls
☐ 12. Child support shall be paid as follows: ☐ as stated in the placement plan.
☐ father: N/A no legal father ☒ mother: temporary support of $20.00 until FOC recommendations of 3rd party support.
☐ 13. Other:

10-15-15
Date

Judge: Robert E. Goebel Jr.

JOHN B. ECONOMOPOULOS (P58074)
Attorney name (type or print) Bar no.

1200 LUDINGTON STREET	ESCANABA	MI	49829	(906) 786-1310
Address	City	State	Zip	Telephone no.

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FILED IN DELTA COUNTY
OCT 15 2015
REGISTER OF PROBATE

MCL 700.5106, MCL 700.5204, MCL 700.5205, MCL 700.5212, MCL 700.5213, MCR 5.402(E)

PC 653 (10/14) **ORDER REGARDING APPOINTMENT OF GUARDIAN/LIMITED GUARDIAN OF A MINOR**

12

EXHIBIT D

STATE OF MICHIGAN

IN THE PROBATE COURT FOR THE COUNTY OF DELTA

In the Matter of:

Leilani A. Orta, DOB: 01/29/2011 File No. 15-GM-21724

Marques P. Orta, DOB: 11/30/2012 File No. 15-GM-21725

HON. ROBERT E. GOEBEL, JR.

OPINION

The following will be an opinion, followed by an order, in the minor guardianship petition to terminate guardianship filed by the mother in Leilani Orta, 15-GM-21724, and Marques Orta, 15-GM-21725.

The guardian is the maternal grandmother to the above two children. She filed a petition with this court on 09/11/2015 to become guardian of the children. The father of each child is unknown. The mother had named three to five possible putative fathers to each child, but paternity was never established.

A hearing on the petition was held. The mother participated in that hearing. The Court found the mother had left the children with the petitioner without legal authority to care for them. It seems that Paul Ortega, grandfather of the children, lived close to the mother in Lower Michigan and had offered to care for them, but the mother chose to place her children with the petitioner some six to seven hour drive from her home in Lower Michigan. The mother left some clothing for the children, which was not suitable for them.

because the clothing and shoes didn't fit; were very old or otherwise unsuitable for them.

Ms. Orta, mother, testified at the initial trial and at subsequent trials. She testified much to the same effect complaining about how badly she was treated by the guardian when she was growing up and how unfit the guardian was to continue care or have initial care. Her actual conduct does not comport with these complaints and that she chose to bring her children to live in the environment she complains about.

Ms. Orta testified that she had the use of a company car and could use it for her private use whenever she wanted to at anytime and for anything; however, she was not visiting with the children and later would complain of a lack of transportation. Indeed, Ms. Orta only paid one visit with the children she had placed with the guardian in June of 2015. She left this visit early to beat the traffic on Labor Day.

The guardian testified to an incident prior to the guardianship when Ms. Orta was living her, along with the children. Ms. Orta slammed a knife down on a kitchen table with the children present and shouted to the guardian, "Just stab me."

The Court entered a support order requiring Ms. Orta to pay $350 per month in support for her two children. The guardian agreed to deviate downwards from the statutory guidelines recommended by the Friend of the Court, which was $436 per month. The last payment made was on 03/10/2016. See the Guardian's Exhibit Number Two.

Ms. Orta filed a petition to terminate the guardianship, and her petition was heard on December 21, 2016 in which she testified, along with other witnesses. The Court denied her petition to terminate the guardianship. The Court, on page 65 of the transcript, denied Ms. Orta's petition to terminate the guardianship. The Court cautioned Ms. Orta that she needed to get her child support current. Ms. Orta replied to the Court, "Okay. If I could pay that in full today, would that make a difference?" The Court responded, "Do you have the ability to?" Ms. Orta, "Yes. I could pay that in full right now. Would that make a difference?" The Court, "If you've had that ability, why -- " Ms. Orta, "Because I just got the ability -- " The Court, "How did you get the ability?" Ms. Orta, "Right before I moved up here, my boss offered that if I needed to, she would immediately pay the bills in full." Continued on page 66. The Court, "Your boss would pay the child support?" Ms. Orta, "My boss is probably one of the best people you would ever meet in your life." The Court, "That was if you needed to pay it." Ms. Orta, "If I couldn't work something out. If that would make a difference, she said she would do whatever it took and she would pay it in full." The Court, "Well, the Court doesn't bargain with money in this situation." Ms. Orta, "That's what I, kind of, is feeling is happening. That, like, the -- " The Court, "There is a court order. I would suggest you follow it to the best of your ability, but I have made the decision at this hearing, so if you paid it today that would not change my mind, but you'll have to decide if you want to pay it today or not. It's up to you at this time. That would complete the hearing. We are in recess at this time."

The Court found from her own testimony that she did have income sufficient to pay child support.

The respondent again filed a petition to terminate the guardianship. She agreed that she made no support payments since December 2016 and that she had an arrearage of $11,550, which is in conformity with the actual facts. She described her life as being great. She testified that she had a full-time job that was paying very well. She testified she could work anywhere in the State of Michigan and that she worked for Meijer, and she has the certificates that would allow her to transfer her skill to any Meijer store. There is a Meijer store here in Escanaba. She submitted a letter from her boss praising her as an employee.

She testified that she tries to call the kids every other day, but sometimes doesn't. She testified that these calls are very hard on her. They are hard on her because she can hear them, but cannot be with them.

The Court finds from the testimony that Marques does not have a bond with his mother and generally does not want to talk to her, nor does he talk to her on the phone. The older child, Leilani, does talk to her mother on the phone, but has expressed a desire not to move downstate with her mother because she wishes to be near her guardian and grandmother. Leilani has stated that she would like to have her mother move up here so she can be closer to both of them.

Ms. Orta testified that if the guardianship was terminated that she would allow the children to have a continued relationship with the present guardian; however, the guardian testified that she had heard

that Ms. Orta had made statements to the contrary and that she would never allow the children to see the guardian if the guardianship was terminated.

The Court would find that it is most likely that Ms. Orta would not allow a continued relationship given the great amount of animosity she has expressed at every hearing for her mother. Ms. Orta clearly has the ability to support the children. She's a smoker and admits she spends about $100 a month for cigarettes. She also spends $20 per month for cat food. She testified she has not asked to transfer to the Meijer store because she prefers to live where she's at and that it's closer to other relatives, and she thinks her pay would be less at Meijer. No reason was given why she thought her pay would be less.

The Court also learned from the testimony of Ms. Orta that in February of 2018, her boyfriend of some one year punched holes in her home such that Paul Orta, her father, had to come and repair them. The boyfriend also assaulted Ms. Orta to the point that the police were called and he was arrested and convicted of domestic violence. There's presently a no contact order outstanding against this boyfriend. Ms. Orta testified that she learned after the assault that he had an extensive criminal record and had been in and out of jails in several different states.

This is very alarming to the Court because if the Court had granted her petition to terminate the guardianship on December 21, 2016, this boyfriend would have exposed the children to this domestic violence.

There have been infrequent visits between Ms. Orta and the children. There were only three to four visits in 2017, and those occurred only because the guardian drove the children to Lower Michigan so they could visit with Ms. Orta. Ms. Orta drove to Delta County in June of 2018, and there was a weekend visit with the children. There have been no visits since June of 2018. Ms. Orta testified that the lack of visitation was because of the great distance involved. She claimed to have no transportation at this time, although she recently paid approximately $11,000 to buy a Jeep. Apparently, she had driven that Jeep to Delta County for the June 2018 visit.

Ms. Orta claims she buys the kids clothing when she visits with them. She did not testify as to what kind of clothing, the amount of clothing, or the value of the clothing. The Court finds this would not amount to much given the infrequencies of the visits.

Ms. Orta testified she knew it would be hard on the kids to have to move to her home, but she was of the opinion they would just have to adjust.

Ms. Orta claims to be in some kind of counseling, but we don't know for how long or what the counseling is for.

Mr. Vandamme, a superintendant and principal of the Mid Pen Schools, testified as to how each child was doing in school. His testimony was very favorable as to the conduct and grades the children were receiving. He was very positive in his praise for the attention and work the guardian was doing with the children and her involvement

with the school. He testified he never received any calls from Ms. Orta.

The daycare provider for the children also gave very favorable testimony as to the care given to the children by the guardian. The daycare provider testified that Leilani has told her that she was afraid Ms. Orta will take her from her grandmother. She said the kids show good respect and good manners as taught to them by the grandmother. It was further testified to by the daycare provider that after the last visit Leilani reported that her mother told her she would take Leilani and her brother from the guardian. Leilani stated this made her feel sad. She stated she wanted her mother to come and live here so she could still be close to her grandmother.

Paul Orta, father of Ms. Orta, testified that he lives about an hour and fifteen minutes from Ms. Orta's home. He testified the kids are happy where they are. He testified that Keith Newman was the boyfriend to Ms. Orta and that she told him that Mr. Newman had punched the holes in the wall at her home and asked him to fix the holes.

The Court finds the children came to live with the guardian on or about June 2015 and have lived with her for approximately three years and four months. She provides proper and appropriate medical care for the children. She testified that at one of the infrequent visits that occurred around Christmas time, the children had a school Christmas program and she suggested Ms. Orta attend that program, but she chose not to, and offered no good reason why she chose not to.

The guardian testified that before Leilani was born, one of Ms. Orta's boyfriends had beaten her up so badly that she had to be taken to the hospital.

Regarding the best interest factors contained in MCL 700.5208(2), the Court finds that the love, affection, and other emotional ties existing between the parties involved, and each child favors the guardian due to the infrequent visits and phone calls. This is especially true as to the youngest child, Marques.

The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue educating and raising the child in the child's religion or creed; if any, favors the guardian. The Court would note there was no testimony regarding the children's religion or creed. The guardian has clearly demonstrated giving love, affection, and guidance to each child given their school record, their good manners and behavior, and the love the children expressed toward her.

The capacity and disposition of the parties involved to provide the child with food, clothing, and medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs clearly favors the guardian. The mother has blatantly refused to obey the court order of child support, even though the guardian agreed to deviate downwards in the amount.

The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity clearly favors the guardian. Prior to the mother placing the children with

the guardian, she had 19 or 20 different residences in a short period of time and was very unstable.

The permanence, as a family unit, of the existing or proposed custodial home: The two children are together with the guardian, and they would be together and placed with the mother. She has her own mobile home that she paid approximately $5,000 for and has owned this home for about three years. The Court knows little else about this home.

The moral fitness of the parties involved: The Court would find this to be neutral.

The mental and physical health of the parties involved: The guardian and the mother are, essentially, equal in this area.

The child's home, school, and community record: This clearly favors the guardian.

The child's reasonable preference: Given the age of the children and the fact they did not testify, nor did anyone ask the Court to interview them privately, this factor is not applicable.

The party's willingness and ability to facilitate and encourage a close and continuing parent-child relationship between the child and his or her parent or parents: This factor favors the guardian and that she has for the vast majority of the times provided transportation to Lower Michigan for visits with Ms. Orta. The Court seriously questions whether Ms. Orta would allow a continued relationship with the children as to their grandmother if she were to have custody of the children in Lower Michigan. This is especially true given the very apparent animosity Ms. Orta displayed to the

guardian at not only the most recent hearing, but at all of the other hearings.

Domestic Violence regardless of whether the violence is direct against or witnesses by the child. This clearly favors the guardian. The mother has a history of domestic violence in her home. This was clearly demonstrated in February of this year. The man she was dating and had in her home was not properly vetted by Ms. Orta. It turned out he had a drinking problem and was very violent. The children would have been exposed to him had the Court granted a termination of the guardianship in December of 2016.

Finally, any other factor considered by the Court to be relevant to a particular dispute regarding termination of a guardianship, removal of a guardian, or parenting time does apply.

Based upon the evidence presented, the Family DIvisio of Circuit Court would have jurisdiction over the children based upon MCL 712.2(b)(6). The mother has without good cause failed or neglected to provide regular and substantial support for her two children for two or more years. She has failed to substantially comply with the court's support order for more than two years after it was entered.

The mother having the ability to visit, contact, or communicate with her two children has substantially failed or neglected without good cause to do so for more than two years.

The best interest factors clearly are in favor of the guardian.

The Court finds that each child has resided with the guardian for at least one year, and Ms. Orta's actions have resulted in a substantial disruption in the parent-child relationship. The Court

finds it in the best interest of the children to continue the guardianship. The Court finds by clear and convincing evidence that the continuation of the guardianship would serve the best interest of each minor. Therefore, Ms. Orta's petition to terminate the guardianship is denied. MCL 700.5209(2).; MCL 700.5208(2).

Dated: October 25, 2018

Honorable Robert E. Goebel, J.
Probate Court Judge

STATE OF MICHIGAN

IN THE PROBATE COURT FOR THE COUNTY OF DELTA

IN THE MATTER OF: LEILANI ORTA, 15-GM-21724
MARQUS ORTA, 15-GM-21725

ORDER

At a session of said Court held in the City of Escanaba, County of Delta, State of Michigan, on this 23rd day of October, 2018.

PRESENT: HONORABLE ROBERT E. GOEBEL, JR.
PROBATE COURT JUDGE

For the reasons stated in the Court's opinion, Ms. Orta's petition to terminate the minor guardianship as to each child is denied.

10/25/2018
Date

Honorable Robert E. Goebel, Jr.

PROOF OF SERVICE

STATE OF MICHIGAN)
: ss.
COUNTY OF DELTA)

The undersigned, being duly sworn on oath, deposes and states that he served the following annexed document(s):

1.	**DOCUMENT(S) SERVED:**	Respondent-Appellant's Application for Leave to Appeal
2.	**SERVED UPON:**	Dustyn Coontz COONTZ LAW PLLC Attorney for Petitioner-Appellee **(via e-filing system)** Michigan Court of Appeals **(via e-filing system)** Michigan Supreme Court **(via e-filing system)** Delta County Probate Court Delta County Courthouse 310 Ludington Street Escanaba, MI 49829 **(via hand delivery)**
3.	**METHOD OF SERVICE:**	e-filing system (Dustyn Coontz, Court of Appeals and Supreme Court) Hand Delivery (Delta County Probate Court)
4.	**DATE OF SERVICE:**	March 16, 2020

/s/ Benjamin Z. Parmet
Benjamin Z. Parmet

Acknowledged before me in Delta County, Michigan, on March 16, 2020.

My commission expires:

11/23/2024

/s/ Darlene J. Murray
Darlene J. Murray
Notary Public, Delta County, Michigan
Acting in Delta County.